

conference telephone call among the authenticating person, the parties, and the reporter. In other instances, an evidentiary hearing with witnesses may be required. The accused need not be present at any hearing on a certificate of correction.

(3) *Authentication of certificate of correction; service on the accused.* The certificate of correction shall be authenticated as provided in subsection (a) of this rule and a copy served on the accused as provided in subsection (b) of this rule. The certificate of correction and the accused's receipt for the certificate of correction shall be attached to each copy of the record of trial required to be prepared under R.C.M. 1103(g).

(e) *Forwarding.* After every court-martial, including a rehearing and new and other trials, the authenticated record shall be forwarded to the convening authority for initial review and action, provided that in case of a special court-martial in which a bad-conduct discharge or confinement for one year was adjudged or a general court-martial, the convening authority shall refer the record to the staff judge advocate or legal officer for recommendation under R.C.M. 1106 before the convening authority takes action.

Rule 1105. Matters submitted by the accused

(a) *In general.* After a sentence is adjudged in any court-martial, the accused may submit matters to the convening authority in accordance with this rule.

(b) *Matters which may be submitted.*

(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. The convening authority is only required to consider written submissions.

(2) Submissions are not subject to the Military Rules of Evidence and may include:

(A) Allegations of errors affecting the legality of the findings or sentence;

(B) Portions or summaries of the record and copies of documentary evidence offered or introduced at trial;

(C) Matters in mitigation which were not available for consideration at the court-martial; and

Discussion

For example, post-trial conduct of the accused, such as providing restitution to the victim or exemplary behavior, might be appropriate.

(D) Clemency recommendations by any member, the military judge, or any other person. The defense may ask any person for such a recommendation.

Discussion

A clemency recommendation should state reasons for the recommendation and should specifically indicate the amount and character of the clemency recommended.

A clemency recommendation by a member should not disclose the vote or opinion of any member expressed in deliberations. Except as provided in R.C.M. 923 and 1008 and Mil. R. Evid. 606(b), a clemency recommendation does not impeach the findings or the sentence. If the sentencing authority makes a clemency recommendation in conjunction with the announced sentence, *see* R.C.M. 1106(d)(3)(B).

Although only written submissions must be considered, the convening authority may consider any submission by the accused, including, but not limited to, videotapes, photographs, and oral presentations.

(c) *Time periods.*

(1) *General and special courts-martial.* After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. If, within the 10-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension.

(2) *Summary courts-martial.* After a summary court-martial, the accused may submit matters under this rule within 7 days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to 20 additional days.

(3) *Post-trial sessions.* A post-trial session under

R.C.M. 1102 shall have no effect on the running of any time period in this rule, except when such session results in the announcement of a new sentence, in which case the period shall run from that announcement.

(4) *Good cause.* For purposes of this rule, good cause for an extension ordinarily does not include the need for securing matters which could reasonably have been presented at the court-martial.

(d) *Waiver.*

(1) *Failure to submit matters.* Failure to submit matters within the time prescribed by this rule shall be deemed a waiver of the right to submit such matters.

(2) *Submission of matters.* Submission of any matters under this rule shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limits is expressly reserved in writing.

(3) *Written waiver.* The accused may expressly waive, in writing, the right to submit matters under this rule. Once filed, such waiver may not be revoked.

(4) *Absence of accused.* If, as a result of the unauthorized absence of the accused, the record cannot be served on the accused in accordance with R.C.M. 1104(b)(1) and if the accused has no counsel to receive the record, the accused shall be deemed to have waived the right to submit matters under this rule within the time limit which begins upon service on the accused of the record of trial.

Discussion

The accused is not required to raise objections to the trial proceedings in order to preserve them for later review.

Rule 1106. Recommendation of the staff judge advocate or legal officer

(a) *In general.* Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial or a record of trial by special court-martial that includes a sentence to a bad-conduct discharge or confinement for one year, that convening authority's staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule.

(b) *Disqualification.* No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, associate or assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing or convening authority in the same case.

Discussion

The staff judge advocate or legal officer may also be ineligible when, for example, the staff judge advocate or legal officer; served as the defense counsel in a companion case; testified as to a contested matter (unless the testimony is clearly uncontroverted); has other than an official interest in the same case; or must review that officer's own pretrial action (such as the pretrial advice under Article 34; see R.C.M. 406) when the sufficiency or correctness of the earlier action has been placed in issue.

(c) *When the convening authority has no staff judge advocate.*

(1) *When the convening authority does not have a staff judge advocate or legal officer or that person is disqualified.* If the convening authority does not have a staff judge advocate or legal officer, or if the person serving in that capacity is disqualified under subsection (b) of this rule or otherwise, the convening authority shall:

(A) Request the assignment of another staff judge advocate or legal officer to prepare a recommendation under this rule; or

(B) Forward the record for action to any officer exercising general court-martial jurisdiction as provided in R.C.M. 1107(a).

(2) *When the convening authority has a legal officer but wants the recommendation of a staff judge advocate.* If the convening authority has a legal officer but no staff judge advocate, the convening authority may, as a matter of discretion, request designation of a staff judge advocate to prepare the recommendation.

(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation.

(2) *Form.* The recommendation of the staff judge